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noted case of *Fletcher v. Rylands*, L. R. 3 H. L., 330, would seem to work substantial justice, and be the better on principle if not on authority. Each case would thus be considered on its own merits without the restraint of technical rules of trespass, which casts the burden on the plaintiff of proving negligence.

CARRIERS—ACTION BY STREET CAR PASSENGER—EVIDENCE ADMISSIBLE UNDER GENERAL ISSUE.—*BINDER ET AL. V. GEORGIA RY & EL. CO.*, 79 S. E. 216 (Ga.).—*Held*, that where a suit is brought against a street railway company to recover damages for the failure to perform its duty by protecting a passenger from the wrongful act of its motorman, the defendant, under the plea of the general issue, can introduce evidence showing that the act and conduct of its servant was fully warranted and justifiable.

The general rule is that a carrier of passengers is not an insurer of their safety. *Gardner v. N. J. Tract. Co.*, 58 N. J. L., 176; *McPadden v. N. Y. C. R. Co.*, 44 N. Y., 478. But such a carrier is bound to use the highest degree of care, skill, and diligence, that is possible under the circumstances, to protect its passengers from injury. *Louisville R. R. Co. v. Wellington*, 137 Ky., 719; *Penn. R. R. Co. v. Ray*, 102 U. S., 451. Courts taking this view impose on the carrier an absolute liability for the torts of its servants. *McMahon v. Chicago City R. Co.*, 239 Ill., 334; *Horgan v. Boston El. R. Co.*, 208 Mass., 287. Hence, it has been held that abusive or insulting language on the part of the passenger will not justify an assault by the carrier's employee, so as to relieve the carrier from liability for damages resulting from the assault. *B'ham R. Light. & Power Co. v. Mullen*, 138 Ala., 614; *Hanson v. Urbana & C. El. Co.*, 75 Ill. App., 474; *Neuer v. Metr. Str. R. Co.*, 143 Mo., 402. But other cases hold that abusive language by a passenger toward the carrier's employee may relieve the carrier from liability for an assault on the passenger. *Wise v. R. R. Co.*, 17 Ky. L. Rep., 1359; *Peavy v. R. R. Co.*, 81 Ga., 485. But the courts taking this view put their decisions on the ground that the passenger is guilty of contributory negligence in unfitting the employee, by such insults, from properly observing his duty, rather than that the insulting language justifies the assault. *Rohrback v. Pull. Pal. Car Co.*, 166 Fed., 797; *R. R. Co. v. Shropshire*, 101 Ga., 33. Courts which do not recognize abusive language as a complete defence for an assault by the carrier's employee, nevertheless allow such conduct as an element in mitigation of damages. *B. & O. R. Co. v. Barger*, 80 Md., 23; *Freedman v. Metr. Str. R. Co.*, 89 App. Div. (N. Y.), 486. But if there had been time for cool reflection after the insults, or if the insulting words were themselves provoked by similar words of the employee the principle of mitigation is held not to apply. *R. R. Co. v. Batchler*, 37 Tex. Civ. App., 116. And, where the conduct of the passenger is not allowed to mitigate the damages, it is allowed to be shown as a defence to the recovery of exemplary damages. *R. R. Co. v. Myzell*, 87 Ark., 123; *Mitchell v. R. R. Co.*, 125 Mo. App., 1. But the fact that a man is a servant of a carrier does not deprive him of the right of self-defence, and so it is generally held that damages in respect of an assault committed by the carrier's servant for the purpose

of defending himself against the violence of a passenger, cannot be recovered in an action against the carrier. *R. R. Co. v. Sampley*, 169 Ala., 372; *O'Brien v. R. R. Co.*, 185 Mo., 263; *R. R. Co. v. Jopes*, 142 U. S., 18. As a carrier is bound to use the highest degree of practicable care to protect its passengers from assaults or insults at the hands of fellow-passengers, it would seem, *a fortiori*, that it would owe the same degree of care to protect from its own servants. See *Goddard v. R. R. C.*, 57 Me., 202, 213.

FOOD—DECEPTIVE NAME—SALE—REGULATIONS.—ST. LOUIS INDEPENDENT PACKING CO. V. HOUSTON, SEC. OF AGRICULTURE ET AL., 204 FED., 120.—Act of Congress, June 30, 1906, c. 3913, 34 Stat., 674, declares that no meat or meat product shall be sold or offered for sale by any person in interstate or foreign commerce under a false or deceptive name, and that the Secretary of Agriculture from time to time shall make such rules and regulations as are necessary for the efficient execution of the act. *Held*, that the term "sausage" being defined by lexicographers as an article of food composed of meat, salt, and spices, the Secretary of Agriculture had authority to prescribe that meat products sold under the name of "sausage" should not contain cereal in excess of 2 per cent, nor water or ice in excess of 3 per cent, and if water and cereal were in excess of such percentages, the substance should be labeled "sausage, water, and cereal."

The most difficult question the courts have had to consider under the Pure Food Law is when is an article of food misbranded or sold under a deceptive name. Courts have resorted to numerous devices to determine the question. In the principal case the court appears to have taken judicial notice of what had become the generally recognized understanding by the public of what the term "sausage" meant, and of what the public generally expected and believed it was composed. In deciding whether a certain food product sold as whiskey should be branded as "Whiskey" or "Imitation Whiskey", in addition to the chemical analysis, the court took into consideration the method of manufacturing each, the product from which each was made, and the time required for "ripening" each. *Woolner & Co. et al. v. Remmich et al.*, 170 Fed., 662; *U. S. v. 68 Cases of Syrup*, 172 Fed., 781. Whether two food products composed of sugar house molasses, corn syrup, and sulphur dioxide and labeled "Sugar Glen Molasses" and "Buno Molasses" respectively and each label stating of what the molasses was composed, the court based its decision on the chemical analysis of pure molasses and the article in question, and held that there was no misbranding. *U. S. v. 779 Cases of Molasses*, 174 Fed., 325; *U. S. v. Morgan*, 181 Fed., 587. Where an article was put on the market as "Hudson's Extract of Vanilla", not having a well known trade meaning or any other indication of what the article was composed, it was held a clear case of misbranding. *Hudson Mfg. Co. v. U. S.*, 192 Fed., 920. Where an article was sold as "London Dry Gin", and it referred to a well known kind of gin and was not intended to represent that it was a foreign product, it was held that there was no misbranding. *U. S. v. 36 Bottles of London Dry Gin*, 205 Fed., 111. In a very recent case the court went farther than heretofore in endeavoring to enforce the act. Green in New